



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x
:
UNITED STATES OF AMERICA
:
- against -
:
ROBERT PETRINO, SR.,
:
Defendant.
:
- - - - -x

ORDER

07 CR. 469 (DC)
07 CR. 806 (DC)

CHIN, D.J.

On November 2, 2007, the Court sentenced the defendant to a term of imprisonment of sixty-nine months. The sentence was an adverse non-guidelines sentence in that it was above the guidelines range. Although the Court indicated during the sentencing that it was considering imposing such an adverse non-guidelines sentence, defense counsel did not request a continuance or a further opportunity to make additional arguments.

Nonetheless it is plain error for a court not to give prior notice of its intent to give an adverse non-guidelines sentence. United States v. Gilmore, 471 F.3d 64, 66 (2d Cir. 2006). Accordingly, the Court will defer entering judgment for now. If the defendant wishes an opportunity to challenge the grounds relied on by the Court for imposing the adverse non-guidelines sentence, defense counsel shall advise the Court by letter within three business days. If such request is made, the Court will schedule another hearing at which the defendant may present his argument orally, and defense counsel may also submit written arguments prior thereto if he wishes. If the Court does

not hear from the defendant within three days, the sentence will stand and the Court will enter judgment accordingly.

SO ORDERED.

Dated: New York, New York
November 7, 2007



DENNY CHIN
United States District Judge